

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1252 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -
3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?

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BHAGWANJI JIRVAR CHHATBAR

Versus

STATE OF GUJARAT

Appearance:

MR JAYANT P BHATT for Petitioners
MR VB GHARANIYA, AGP for Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH
Date of decision: 08/12/98

ORAL JUDGEMENT

By means of this petition the petitioners has sought for quashing the orders dated 13-9-1985 of the

Collector, Gandhinagar and 20-1-1986 of the Secretary, Revenue Department (Appeal) passed in S/RDE/BAP/712/85 u/s 211 of the Land Revenue Code.

2. Plot No. 652-2 admeasuring 200 sq. mtr. of Sector 30 of Gandhinagar city was put for auction by the Auction Officer-Mamlatdar (Encroachment), Gandhinagar on 21-2-1985. Upset price of the plot was decided by the Chief Town Planner and Architect Advisor, Gandhinagar as Rs. 300/- per sq. mtr. The petitioners were highest bidder at the rate of Rs. 326-50 ps. per sq. mtr. The Mamlatdar sent the record regarding the procedure of the action along with the Sale Deed. The Collector set aside the order of auction of the Mamlatdar by the order dated 13-9-1985 on the ground that the auction was arranged on 11-9-1984 for the plots No. 651-1, 651-2 and 652-1 nearby plots of the aforesaid other plots which were auctioned at the rate of Rs.358/- per sq. mtr., 351-00 per sq. mtr. and Rs.351-00 per sq. mtr. against the upset price of Rs. 300/- per sq mtr. of all the said three plots respectively. The auction price of the plot no. 352-2 in dispute was held on 21-2-85 was much less. The Collector while exercising the power u/s 179 of the Land Revenue Code, 1879 nullified the public auction held on 21-2-85 in respect of the plot no. 652-2 of Sector 30 of Gandhinagar city. The petitioners have filed the appeal before the Government. The Government by exercising the power of Revision u/s 211 of the aforesaid Act dismissed the revision by the order dated 20-1-1986 and confirmed the order of the learned Collector dated 13-9-1985.

3. Learned counsel for the petitioner contended that in the present case neither show cause notice has been issued nor he has been given any opportunity of being heard to the petitioner before cancellation of the auction sale made in favour of the applicant, hence the order of the authorities below are illegal and against the principle of natural justice. Learned counsel for the petitioner relied on the decision of this Court dated 10-7-1997 passed in Special Civil Application No. 3594/97 in support of his contention wherein it was held that the matter was remanded back to the authority concerned for decision afresh as the petitioner was not given opportunity by the Collector before cancelling the auction.

4. In the aforesaid decision 10-7-1997 this Court set aside the orders of the Collector and the Government and remanded the case to the Collector for affording opportunity of hearing and to decide the case afresh. I

am in agreement with the above decision of this Court dated 10-7-1997 delivered in Spl. Civil Application No.3594/97.

5. In view of the statement of the learned counsel for the petitioner has not been issued any show cause notice and has also not been given any notice of hearing before cancelling the auction made in favour of the applicant. Accordingly, the petition is allowed and the impugned orders dated 13-9-95 passed by the Collector, Gandhinagar Annexure-A and the order dated 20-1-1986 passed by the Secretary, Revenue Department (Appeal), Government of Gujarat, are hereby set aside and the matter is remanded to the Collector to decide as a fresh after affording reasonable opportunity of hearing to the petitioner as far as possible within three months from the date of presentation of a certified copy of this order. The learned counsel for the petitioner pointed that he has already deposited Rs. 16,400/- being 1/4 amount of auction and that is lying with the Collector. The Collector will take into consideration this fact at the time of hearing and deciding the matter in dispute. The interim order, if any, stands vacated.

6. Rule is made absolute, with no order as to costs.

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